

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:19-CV-00694-FDW-DSC**

JILL ROE,

Plaintiff,

v.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION; MARK BOSCO, in his individual capacity and as an employee of Charlotte-Mecklenburg Schools; **BRADLEY LEAK**, individually, as an agent of Charlotte-Mecklenburg Schools, and in his official capacity as a law enforcement officer of the Charlotte-Mecklenburg Police Department; **THE CITY OF CHARLOTTE**, a North Carolina Municipality; and **KERR PUTNEY**, in his official capacity as Chief of the Charlotte-Mecklenburg Police Department,

Defendants.

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

Defendants Charlotte-Mecklenburg Board of Education (“Defendant Board”) and Mark Bosco (“Defendant Bosco”) (hereinafter, collectively referred to as “Defendants”), through their undersigned counsel, and pursuant to Rule 12(b)(1), 12(b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure, move to dismiss Plaintiff’s Complaint.

As set forth more fully in the Memorandum in Support of Defendants’ Motion to Dismiss Plaintiff’s Complaint filed contemporaneously herewith, Defendants move to dismiss all claims on the following grounds:

1. Pursuant to Rule 12(b)(6), Plaintiff's Title IX claim against Defendant Board (Count I) should be dismissed because Plaintiff has failed to state a claim upon which relief can be granted;
2. Pursuant to Rule 12(b)(6), Plaintiff's Section 1983 claims against Defendant Bosco (Count II) should be dismissed because Defendant Bosco is entitled to Qualified Immunity;
3. Pursuant to Rule 12(b)(6), Plaintiff's Section 1983 claims against Defendant Board (Counts II and III) under any theory should be dismissed because Plaintiff has failed to adequately plead municipal liability;
4. Pursuant to Rule 12(b)(6), Plaintiff's negligence-based claims (Counts IV and V) should be dismissed because Defendant Bosco is entitled to Public Official Immunity;
5. Pursuant to Rules 12(b)(1), (2), and (6), Plaintiff's negligence-based claims (Count VI) should be dismissed because Defendant Board has governmental immunity, and Plaintiff has failed to allege waiver; and
6. Pursuant to Rule 12(b)(6), Plaintiff's claim for common law obstruction of justice (Count VII) should be dismissed for failure to state a claim and because Defendant Bosco has Public Official Immunity.

WHEREFORE, Defendants respectfully request that the Court dismiss Plaintiff's Complaint with prejudice.

This the 28th day of February 2020.

/s/ Terry L. Wallace
Terry L. Wallace
N.C. State Bar No. 26806
Wallace Childers PLLC
5821 Fairview Road; Suite 110
Charlotte, North Carolina 28209
Phone: 704-626-2903
Fax: 704-626-3476
Email: terry@wallacechilders.com

**ATTORNEY FOR DEFENDANTS CHARLOTTE-
MECKLENBURG BOARD OF EDUCATION AND
MARK BOSCO**

CERTIFICATE OF SERVICE

This is to certify that on this date the undersigned filed the foregoing **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT** using the Court's CM/ECF system which will send notification of such filing to the CM/ECF participants.

This the 20th day of February 2020.

/s/ Terry L. Wallace

Terry L. Wallace

N.C. State Bar No. 26806

Wallace Childers PLLC

5821 Fairview Road; Suite 110

Charlotte, North Carolina 28209

Phone: 704-626-2903

Fax: 704-626-3476

Email: terry@wallacechilders.com